

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
WITEL COMMUNICATIONS, LLC)
For Approval of the Transfer of)
Ownership of WilTel Communications,)
LLC from WilTel Communications)
Group, Inc. to Leucadia National)
Corporation.)
_____)

DOCKET NO. 03-0367

DECISION AND ORDER NO. 20677

Filed November 25, 2003

At 9 o'clock A..M.

for Bruce K. Hagg
Chief Clerk of the Commission

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DECISION AND ORDER

I.

Introduction

WILTEL COMMUNICATIONS, LLC ("WCL" or "Applicant") requests commission approval for the transfer of ultimate ownership and control of WCL from WilTel Communications Group, Inc. ("WilTel") to Leucadia National Corporation ("Leucadia") ("proposed financial transaction").¹

Copies of the application were served on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). The Consumer Advocate, by its position statement filed on October 28, 2003, indicates that it does not object to the approval of the proposed financial transaction, subject to the qualification that Applicant revises its tariff within 30 days of this decision and order to reflect its

¹WCL's application, filed on October 13, 2003.

new company name, WilTel Communications, LLC (fka, Williams Communications, LLC).

II.

Background

A.

Description of Subject Entities

WCL is a Delaware limited liability company and a wholly-owned subsidiary of WilTel, a publicly traded Nevada corporation. WCL is WilTel's primary operating subsidiary and owns substantially all of WilTel's network assets and employs substantially all of its employees. WCL is a telecommunications carrier authorized to provide intrastate telecommunications services in the State of Hawaii ("State").²

²The commission issued Williams Communications LLC (fka, Williams Communications, Inc.) a certificate of authority ("COA") to provide intrastate telecommunications services in the State on a resold basis in 1999. Decision and Order No. 17092, filed on July 22, 1999, in Docket No. 99-0052. Although the Consumer Advocate states that Williams Communications, LLC changed its name to WilTel Communications, LLC, our records do not reflect such change in name. The last entry in Docket No. 99-0052 reflects a commission letter, dated June 13, 2002, issuing a new COA No. 99-0052 reflecting the name change to Williams Communications, LLC.

Leucadia is a publicly traded New York corporation. It presently owns approximately 47.4 per cent of WilTel's stock.³ Leucadia is a diversified financial services holding company engaged through its subsidiaries in a variety of businesses including commercial and personal lines of property and casualty insurance, banking and lending, manufacturing, winery operations, real estate activities, and precious metals mining.

B.

Proposed Financial Transaction

The proposed financial transaction involves a transfer of control of WilTel, WCL's parent, to Leucadia through Leucadia's acquisition of the majority of WilTel's interest. Specifically, the proposed financial transaction will result in Leucadia increasing its current ownership interest in WilTel from 47.4 per cent to 100 per cent through a tender offer to purchase WilTel's outstanding stock. As part of the proposed financial transaction, Leucadia may have a wholly owned subsidiary, Wrangler Acquisition Corporation ("Wrangler") temporarily hold Leucadia's shares of WilTel stock pending the merger of Wrangler

³WCL represents that Leucadia made its initial investment in WilTel in 2002 as part of the plan of reorganization approved by the United States Bankruptcy Court for the Southern District of New York (Case No. 02-119577). However, as stated by the Consumer Advocate, the commission's records do not indicate any commission approval of this particular financial transaction. In addition to its current ownership of approximately 47.4 per cent of WilTel's common stock, Leucadia also obtained the right to designate four of WilTel's nine directors. The remaining 52.6 per cent of WilTel's shares is widely held among public shareholders.

into WilTel. Applicant states that the number of WilTel's public shareholders that subscribe to the tender offer will determine the temporary role of Wrangler, and that WilTel will continue to hold all of the stock of WCL. Accordingly, the ultimate control of WCL will indirectly transfer to Leucadia ("indirect transfer of control"). Applicant represents, among other things, that the indirect transfer of control: (1) will neither impair nor jeopardize its provisions of service to the public nor will it have an effect on its rates, and (2) will be transparent to WCL's consumers in the State.

III.

Discussion

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 all 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.⁴

HRS § 269-16.9 also permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public

⁴See, Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

interest regulation. Specifically, HAR § 6-80-135 permits us to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

Upon review of the record in this docket, particularly Applicant's representations in this docket, we find the following: (1) that much of the telecommunications services currently provided by WCL are competitive; (2) that WCL is a non-dominant carrier in Hawaii; (3) that the proposed financial transaction is consistent with the public interest; and (4) that 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 § 6-80-135.⁵ Second, our records indicate that Applicant's tariff and COA No. 99-0052 reflect Williams Communications, LLC rather than WilTel Communications, LLC. Thus, Applicant's tariff and COA No. 99-0052 should be revised to reflect its new company name, WilTel Communications, LLC (fka, Williams Communications, LLC). Consequently, we conclude that Applicant should be required to file its revised tariff and a request to revise COA No. 99-0052 to

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.

reflect its new company name, WilTel Communications, LLC (fka, Williams Communications, LLC) within 30 days from the issuance date of this decision and order. Finally, we must reiterate that the commission has jurisdiction to review all proposed financial transactions of the parent entity of a regulated public utility under HRS § 269-7(a). In the future, we expect WCL to request commission approval of any and all proposed financial transactions of WilTel that may directly or indirectly affect WCL.

IV.

Orders


THE COMMISSION ORDERS:


1. The requirements of HRS § 269-7(a), to the extent applicable, are waived with respect to the proposed financial transaction described in the instant application, filed on October 13, 2003.

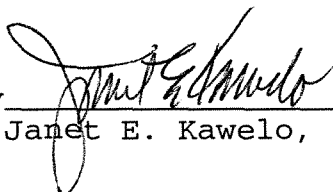
2. Within 30 days from the issuance date of this decision and order, Applicant shall file a revised tariff and a request to revise COA No. 99-0052 reflecting its new company name, WilTel Communications, LLC (fka, Williams Communications, LLC).

DONE at Honolulu, Hawaii this 25th 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

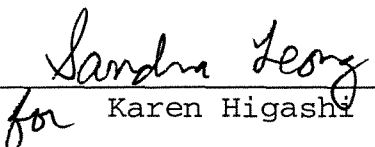
03-0367.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No.20677 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
P. O. Box 541
Honolulu, HI 96809

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for Karen Higashi

DATED: November 25, 2003