BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of

ITC-DELTACOM COMMUNICATIONS, INC.
And BUSINESS TELECOM, INC.

To Refinance Existing Debt and
Assume Liability as Guarantor for
Additional Debt.

DOCKET NO. 04-0032

DECISION AND ORDER NO. 20859

Filed March 22, 2004
At 10:00 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
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DECISION AND ORDER

I.
Introduction

ITC^DELTACOM COMMUNICATIONS INC. (DeltaCom") and
BUSINESS TELECOM, INC. ("BTI") (collectively, "Applicants"),
request commission approval to refinance existing debt
obligations resulting in additional funds available for these
companies in an amount equal to or up to $60 million,
which includes an anticipated $50 million unfunded revolver
("Proposed Refinancing")¹. Applicants make their request
pursuant to Hawaii Revised Statutes ("HRS") § 269-17.

Applicants served copies of the application on the
Division of Consumer Advocacy, Department of Commerce and
Consumer Affairs ("Consumer Advocate"). The Consumer Advocate
states that it does not object to Applicants’ request for

¹Applicants’ application, filed on February 6, 2004.
commission approval of the Proposed Refinancing subject to one qualification, discussed below in Section II.C.

II.

Background

A.

Description of Applicants

DeltaCom is an Alabama corporation and a wholly-owned subsidiary of Interstate FiberNet, Inc. ("IFN"). IFN, a provider of wholesale fiber optic transmission, is wholly-owned by ITC^DeltaCom, Inc., DeltaCom's ultimate parent holding company. DeltaCom is presently authorized to provide telecommunications in all fifty (50) states including the State of Hawaii ("State").

BTI is a North Carolina corporation and a wholly-owned subsidiary of BTI Telecom Corp. ("BTI Telecom"), a privately held North Carolina holding company. BTI is presently authorized to provide facilities-based and/or resold telecommunications

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3See also, Decision and Order No. 20370, filed on August 3, 2003, in Docket No. 03-0193.

4DeltaCom is authorized to provide intrastate telecommunications services in the State on a resold basis. Decision and Order No. 16931, filed on April 6, 1999, in Docket No. 98-0408.
services in all fifty (50) states and the District of Columbia and competitive local exchange services in over 20 states.\textsuperscript{5}

B. Summary of Proposed Refinancing

Applicants’ Proposed Refinancing involves a proposal to refinance existing debt obligations with the net result that additional funding will be made available of up to $60 million, which includes an anticipated unfunded $50 million revolver. Applicants state that the payment of the existing debt including any additional amounts drawn from a revolving credit facility will be due and payable in up to eight (8) years. Moreover, in order to refinance such existing debt, Applicants represent that they will assume liability as guarantors for additional debt.

Applicants assert, among other things, that allowing them to “take advantage of better terms and conditions related to existing financing enables [them] to achieve better cash flow and capitalization which in turn enhances their ability to provide quality services which is in the public interest.” Applicants further represent that “there will be no change to the rates, terms and conditions currently offered by Applicants to existing customers in Hawaii.” Finally, Applicants contend that the consummation of these transactions will “enable [them] to compete in the market for telecommunications services by giving them

\textsuperscript{5}BTI is authorized to provide intrastate telecommunications services in the State on a resold basis. Decision and Order No. 16358, filed on June 2, 1998, in Docket No. 98-0143. See also, Decision and Order No. 20389, filed on August 22, 2003, in Docket No. 03-0200.
access to the financial resources they may need to draw in order to introduce new products and services and to respond to the competitive telecommunications environment."

C. Consumer Advocate's Position

The Consumer Advocate states that it does not object to Applicants' request for commission approval of the Proposed Refinancing, described above, provided copies of the proposed debt refinancing documents are submitted to the commission and the Consumer Advocate for their records within thirty (30) days of the date of this decision and order. It recognizes that "the entry of many telecommunications service providers in the Hawaii market" will "serve to mitigate any traditional utility regulatory concerns" regarding the Proposed Financial Transaction. Therefore, if there are any adverse consequences from the Proposed Refinancing, "consumers in Hawaii will have the option of selecting another service provider."

III. Discussion

HRS § 269-17 requires a public utility to obtain the commission's approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than 12 months. The statute limits the purpose for which stocks and other evidences of indebtedness may be issued to, among other things, the acquisition of
property, building or construction, or improving the utility's capital facilities or services. HRS § 269-19 requires a public utility corporation to obtain our consent prior to, among other things, mortgaging, encumbering, or otherwise disposing of its property.

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. Moreover, 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 a review of the record, we find that the Proposed Refinancing, described above, falls under the purview of HRS §§ 269-17 and 269-19. However, we find, at this time, that the telecommunications services currently provided by Applicants are fully competitive, and that Applicants are non-dominant carriers in Hawaii. We also find that the Proposed Refinancing is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes that the applicable requirements of HRS §§ 269-17 and 269-19 should be waived with
regards to the matters in this docket. Similarly, based on the same findings and conclusions stated above, we will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that Applicants' application does not meet all of the filing requirements. Nonetheless, we agree with the Consumer Advocate that certain information and/or documents should be provided to the commission and the Consumer Advocate for their records. Therefore, we will adopt the Consumer Advocate's recommendation, and direct Applicants to submit copies of the proposed debt refinancing documents to the commission and the Consumer Advocate within thirty (30) days of the date of this decision and order.

IV.

Orders

THE COMMISSION ORDERS:

1. The provisions of HRS §§ 269-17 and 269-19, to the extent applicable, are waived with respect to the Proposed Refinancing, described in Applicants' application, filed on February 6, 2004.

The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-17 and 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS §§ 269-17 and 269-19 is based on our review of Applicants' application. Thus, our waiver in this instance of the applicability of HRS §§ 269-17 and 269-19 should not be construed by any public utility, including Applicants, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

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2. HAR §§ 6-61-101 and 6-61-105 filing requirements, to the extent applicable, are waived. Nonetheless, Applicants shall submit copies of the proposed debt refinancing documents to the commission and the Consumer Advocate within thirty (30) days of the date of this decision and order. Failure to promptly comply with this filing requirement may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii this 22nd day of March, 2004.

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
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20859 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

ELLEN G. SANDS, ESQ.
NOWALSKY, BRONSTON & GOTHARD, APLLC
3500 N. Causeway Boulevard, Suite 1442
Metairie, LA  70002

NANETTE S. EDWARDS
DIRECTOR - REGULATORY
4092 S. Memorial Parkway
Huntsville, AL  35802

DATED:  March 22, 2004

[Karen Higashi's signature]

Karen Higashi