

75
SLW

—

;

)

)

)

)

(

21469

NOV. 17

8 o'clock A

Karen Higzel.

Chief Clerk of the Commission

RECEIVED

2004 NOV 22 A 8:16

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

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

Commission, State of Hawaii.
H. H. Sigel.

In the Matter of the Application of)

OPERATOR SERVICE COMPANY,

BC HOLDING III CORPORATION, AND

ONSLOW HOLDINGS, LLC

For Authorization to Consummate an

Equity Transaction Resulting in a

Minority Change of Ownership and

Transfer of Certificate.

Decision and Order No. 21469

'Applicants' application, filed on September 24, 2004
(“Application”)

Applicants served a copy of the Application on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). The Consumer Advocate, stated in its Statement of Position, filed on November 1, 2004 ("Statement of Position"), that it does not object to the approval of the Proposed Transactions, described above, subject to one qualification, discussed below.

II.

Background

A.

Overview of Subject Entities

OSC, a Texas corporation, is a public utility that holds a commission-issued certificate of authority ("COA") to provide intrastate telecommunications services on a resold basis within the State of Hawaii ("State").² OSC is a wholly-owned subsidiary of BC Holding.³ Onslow, a California limited liability company, is a holding company organized for the purpose of holding an equity interest in OSC, as described further below.

²Decision and Order No. 20842, filed on March 9, 2004, in Docket No. 03-0358.

³The commission also takes official notice, pursuant to HAR § 6-61-48, of any other commission records relating to OSC.

B.

Description of Proposed Transactions

Applicants propose a series of transactions, whereby BC Holding first intends to transfer forty-nine per cent (49%) of its interest in OSC to Onslow ("Proposed Indirect Minority Transfer"). As part of these transactions, OSC also plans to transfer its COA to newly-formed entity, Operator Service, LLC ("New OSC"), a Delaware limited liability company ("Proposed Transfer of OSC's COA to New OSC").

In support of their Application, Applicants represent the following:

1. The Proposed Transactions will be transparent to customers, and will not result in the change of any rate, term or condition of service;
2. Customers should benefit from the Proposed Transactions as they will ensure that Applicants continue to compete effectively and efficiently in the competitive telecommunications marketplace offering high-quality, cost-competitive services; and
3. No change in management is contemplated as a result of the Proposed Transactions.

B.

Consumer Advocate's Position

As stated in its Statement of Position, the Consumer Advocate states that it does not object to Applicants' request to

waive the requirements of an equity interest transaction between BC Holding and Onslow, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135. The Consumer Advocate further states that it does not object to commission approval of the Proposed Transfer of OSC's COA to New OSC, subject to the condition that Applicants submit a copy of New OSC's articles of organization as a Delaware limited liability company, or other documentation that substantiates the transaction to the commission and the Consumer Advocate within thirty (30) days from the date of this decision and order.

III.

Discussion

A.

Proposed Indirect Minority Transfer

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 proposed transactions of the parent entity of a regulated public utility under HRS § 269-7(a). The Proposed Indirect Minority Transfer, described above, falls under our purview under HRS § 269-7(a).

Nonetheless, HRS § 269-16.9 (e) also permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public 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 Applicants' representations, we find the following: (1) much of the telecommunications services currently provided by OSC are competitive; (2) OSC is a non-dominant carrier in Hawaii; (3) the Proposed Indirect Minority Transfer is 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, regarding the Proposed Indirect Minority Transfer, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.⁴ Similarly, we also find it in the public interest to waive the applicability of HAR § 6-61-105 to the extent that the Application in this docket is not in compliance with those rules. Thus, for purposes of considering this Application, we will not require the information and documents normally required upon the filing of such Application.

⁴At the same time, the commission will continue to examine a utility's application or petition on a case-by-case basis to determine whether the applicable requirements of HRS §§ 269-19, 269-17 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 or petition involving similar transactions or circumstances.

B.

Proposed Transfer of OSC's COA to New OSC

HRS § 269-19 also specifically provides, in relevant part, that: "No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of . . . any franchise or permit, or any right thereunder . . . without first having secured from the public utilities commission an order authorizing it so to do."

Applicants contend that "[n]o change in management will occur as a result of Proposed Transfer of OSC's COA to New OSC, and that "once converted, [New OSC] will possess the same managerial experience and financial resources as it did prior to the conversion and has already demonstrated the required qualifications to provide telecommunications service in Hawaii."

Upon reviewing and taking official notice of all pertinent documents in the commission's records relating to OSC, pursuant to HAR § 6-61-48, we find that new OSC has fulfilled the requirements of HAR § 6-80-18, to the extent applicable.⁵ Notwithstanding the commission's approval of transferring the COA from OSC to New OSC, the commission agrees with the Consumer Advocate's recommendation that certain information and documents should be provided to the commission and the Consumer Advocate subsequent to the issuance of this decision and order. Therefore,

⁵Moreover, based on our finding made above that competition, in this instance, will serve the same purpose as public interest regulation, we will also, on our own motion, waive the requirements of HAR § 6-80-17(c) to the extent that the instant application did not fully comply with the requirements.

we will adopt the Consumer Advocate's recommended condition in its entirety. In addition, we will require Applicants to submit a copy of New OSC's certificate of authority to transact business in the State as a foreign corporation from the Department of Commerce and Consumer Affairs. We will also require New OSC to be accountable for any unpaid public utility fees and outstanding annual financial reports required to be filed by OSC. Thus, we will approve the Proposed Transfer of OSC's COA to New OSC, pursuant to HRS § 269-19, subject to the following conditions:

1. Within thirty (30) days of the date of this decision and order, Applicants shall file a copy of New OSC's articles of organization as a Delaware limited liability company, or other documentation that substantiates the transaction to the commission and the Consumer Advocate;
2. Within thirty (30) days of the date of this decision and order, Applicants shall submit copy of New OSC's certificate of authority to transact business in the State as a foreign corporation from the Department of Commerce and Consumer Affairs to the commission and the Consumer Advocate; and
3. New OSC shall continue to be accountable for any and all of OSC's unpaid public utility fees due to the commission, pursuant to HRS § 269-30, and any and all of OSC's annual financial reports that are required to be filed with the commission in accordance with HAR § 6-80-91.

IV.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS § 269-7(a), to the extent applicable, are waived with respect to the Proposed Indirect Minority Transfer.

2. The transfer of OSC's COA to New OSC to operate as a reseller of telecommunications services in the State is approved, pursuant to HRS § 269-19 and subject to the following conditions:

- a. Within thirty (30) days of the date of this decision and order, Applicants shall file a copy of New OSC's articles of organization as a Delaware limited liability company, or other documentation that substantiates the transaction to the commission and the Consumer Advocate; and
- b. Within thirty (30) days of the date of this decision and order, Applicants shall submit copy of New OSC's certificate of authority to transact business in the State as a foreign corporation from the Department of Commerce and Consumer Affairs to the commission and the Consumer Advocate; and
- c. New OSC shall continue to be accountable for any and all of OSC's unpaid public utility fees due to the commission, pursuant to HRS § 269-30, and any and all of OSC's annual

financial reports that are required to be filed with the commission in accordance with HAR § 6-80-91.

3. As the holder of a COA, New OSC shall be subject to all applicable provisions of HRS chapter 269, HAR chapters 6-80 and 6-81, any other applicable State laws and commission rules, and any orders that the commission may issue from time to time.


4. New OSC shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Said tariffs shall comply with the provisions of HAR chapter 6-80. In the event of a conflict between any tariff provision and State law, State law shall prevail.


5. An original and eight (8) copies of the initial tariff shall be filed with the commission with two (2) additional copies served on the Consumer Advocate. New OSC shall ensure that the appropriate issued and effective dates are reflected in its tariffs. The Consumer Advocate may provide comments and recommendations, if any, to OSC's initial tariff within twenty (20) days after being served of such tariff.

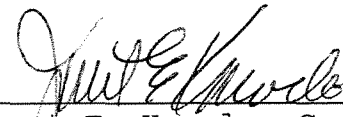
6. Applicants shall promptly comply with the requirements set forth above. Failure to promptly comply with these requirements may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii NOV 17 2004

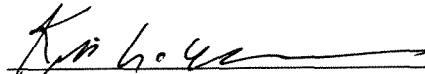
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel
04-0281.ac

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21469 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

CONNIE WIGHTMAN
TECHNOLOGIES MANAGEMENT, INC.
210 Park Avenue North
Winter Park, FL 32789

Consultant to OPERATOR SERVICE COMPANY



Karen Higashi

DATED: NOV 17 2004