

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
)  
TALK AMERICA HOLDINGS, INC.; )  
TALK AMERICA, INC.; and CAVALIER )  
TELEPHONE CORP. )  
)  
For Approval of an Indirect Transfer )  
Of Control and Related Financing )  
Transactions. )  
\_\_\_\_\_ )

DOCKET NO. 2006-0395

DECISION AND ORDER NO. 23102

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

2006 DEC -5 A 8:50

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Filed Dec. 4, 2006  
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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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Docket No. 2006-0395  
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DECISION AND ORDER

By this Decision and Order, the commission waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a), 269-17, and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable, with respect to the joint petition of TALK AMERICA HOLDINGS, INC. ("TA HOLDINGS"), TALK AMERICA, INC. ("TALK AMERICA"), AND CAVALIER TELEPHONE CORPORATION ("CTC") (collectively, "Petitioners") to approve certain transactions that would 1) allow TA Holdings to acquire indirect control of Talk America, a provider of telecommunications services in the State of Hawaii; and 2) allow Talk America to participate in certain financing transactions as a co-guarantor (collectively, "Proposed Transaction").<sup>1</sup>

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<sup>1</sup>Joint Petition of Talk America Holdings, Inc., Talk America, Inc. and Cavalier Telephone Corp. for Approval of an Indirect Transfer of Control and Related Financing Transactions; Exhibits "A" and "B"; and Certificate of Service, filed on October 2, 2006 ("Application"). The Application was served upon the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF

I.

Background

A.

Description of Subject Entities

1.

CTC

CTC is a Delaware corporation whose principal place of business is Richmond, Virginia. CTC wholly owns Cavtel Holdings, LLC ("Cavtel Holdings"), a Delaware limited liability company, which in turn wholly owns all other entities in the "Cavalier family" of companies.<sup>2</sup> Neither CTC nor Cavtel Holdings is certificated in any jurisdiction to provide telecommunications services; however several of Cavtel Holdings' subsidiaries hold domestic and international Section 214 authorizations from the Federal Communications Commission.<sup>3</sup> Cavtel Holdings' subsidiaries include Cavalier Acquisition Corp. ("Cavalier Acquisition"), which was formed to consummate the Proposed Transaction.

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COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). Pursuant to HRS § 269-51 and HAR § 6-61-62, the Consumer Advocate is an ex officio party to all proceedings before the commission.

<sup>2</sup>Application at 1 n.1.

<sup>3</sup>Id. at 2.

TA Holdings and Talk America

TA Holdings is a publicly held Delaware corporation, headquartered in Pennsylvania and is the parent of a number of local and long distance telecommunications carriers, including Talk America. In Hawaii, Talk America is authorized to provide local exchange and interexchange telecommunications services.<sup>4</sup>

## B.

Application

The Proposed Transaction will be completed in several steps. First, Cavtel Holdings will borrow from a "syndication of lenders" (the "Lenders"), capital in an amount up to \$510 million to finance the acquisition of TA Holdings and its subsidiaries, for the related repurchase of CTC preferred stock (approximately \$72 million) and common stock and employee stock options (approximately \$5 million), as well as to provide for working capital and other general corporate purposes.<sup>5</sup> Second, CTC, through Cavtel Holdings will acquire all of the issued and outstanding shares of TA Holdings. Third, TA Holdings will merge into Cavalier Acquisition, with TA Holdings being the surviving

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<sup>4</sup>Decision and Order No. 15567, filed on May 8, 1997, in Docket No. 97-0110.

<sup>5</sup>Application at 6. In addition, upon closing the Proposed Transaction, Talk America will become a co-guarantor in Holdings' same indebtedness and will pledge its assets as security. Id.

entity.<sup>6</sup> The result of this plan will be that Cavtel Holdings, and by extension, CTC, will indirectly control Talk America.

C.

Consumer Advocate's Statement of Position

On November 9, 2006, the Consumer Advocate filed its statement of position ("Statement of Position") recommending that the commission waive its investigative and approval authority under HRS §§ 269-7(a), 269-17, and 269-19, with respect to the Proposed Transaction. The Consumer Advocate cites Talk America's role as a non-dominant carrier in Hawaii (having reported less than \$100,000 of intrastate revenues in its 2005 annual financial report),<sup>7</sup> Petitioners' assertion that the results of the Proposed Transaction will be transparent to its customers, and asserts that the Proposed Transaction will allow CTC and TA Holdings' operating companies to provide their customers with the potential for more comprehensive telecommunications services, in addition to strengthening their competitive position in Hawaii.<sup>8</sup>

Should the commission decline to waive the above statutory provisions, the Consumer Advocate does not object to approval of the Application for the above-stated reasons.

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<sup>6</sup>Id. at 5.

<sup>7</sup>Statement of Position at 6.

<sup>8</sup>Id.

## II.

### Discussion

HRS § 269-16.9 allows the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission 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.

In this docket, we find, at this time, that the telecommunications services currently provided by Talk America are fully competitive, and that Talk America is a non-dominant carrier in Hawaii. The commission also finds that the Proposed Transaction is reasonable and 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 requirements of HRS §§ 269-7(a), 269-17, and 269-19, to the extent applicable, should be waived with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.<sup>9</sup> Similarly, based on the findings and conclusions stated above, the commission should also waive the provisions of

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<sup>9</sup>See Decision and Order No. 18454, filed on March 28, 2001, in Docket No. 00-0443. 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 §§ 269-7(a), 269-17, and 269-19 should be waived. Thus, the commission's waiver in this instance of the applicability of HRS §§ 269-7(a), 269-17 and 269-19 should not be construed by any public utility, including Petitioners, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

HAR §§ 6-61-101 and 6-61-105, to the extent that Petitioners fail to meet any of these filing requirements.

III.

Orders

THE COMMISSION ORDERS:


1. The requirements of HRS §§ 269-7(a), 269-17 and 269-19, to the extent applicable, are waived with respect to the Proposed Transaction described in the Application filed on October 2, 2006.

2. To the extent that the Application does not fully comply with the filing requirements of HAR chapter 6-61, those requirements, including HAR §§ 6-61-101 and 6-61-105, are waived.

3. This docket is closed unless otherwise ordered by the commission.

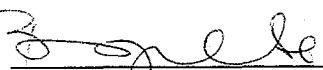
DONE at Honolulu, Hawaii DEC - 4 2006.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

APPROVED AS TO FORM:

  
Benedyhe S. Stone  
Commission Counsel

2006-0395.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23102 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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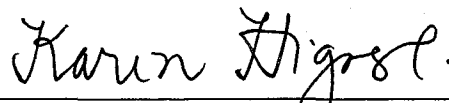
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Karen Higashi

DATED: DEC - 4 2006