

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
LIGHTYEAR NETWORK SOLUTIONS, LLC)
and FIRST COMMUNICATIONS, INC.)
For Approval of Transfer of Control)

DOCKET NO. 2006-0462

DECISION AND ORDER NO. 23199

Filed Jan. 16, 2007
At 12 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

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Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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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 LIGHTYEAR NETWORK SOLUTIONS, LLC ("Lightyear") and FIRST COMMUNICATIONS, INC.'s ("FCI") (collectively, "Applicants") request to approve a transaction that would allow FCI to undertake an initial public offering of its shares and subsequently acquire control of Lightyear ("Proposed Transaction").

I.

Background

A.

Description of Subject Entities

Lightyear, a Kentucky limited liability company located in Louisville, Kentucky, is authorized to provide local exchange telecommunications services in forty-four (44) states and long

distance telecommunications services in forty-nine (49) states. In Hawaii, Lightyear is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services, pursuant to Decision and Order No. 20820 filed on February 26, 2004, in Docket No. 03-0413.

First Communications, LLC ("First Communications") is an Ohio limited liability company that provides local, private line, and long distance services to businesses and residential customers in several states. Xtension Services, Inc. ("Xtension") is a Delaware corporation authorized to provide long distance services in thirteen (13) states and local exchange telecommunications services in New Jersey. Neither First Communications nor Xtension is authorized to provide telecommunications services in the State of Hawaii.

FCI is a Delaware corporation formed to acquire 100% of the shares of Lightyear, First Communications and Xtension.

B.

Application

On November 24, 2006, Applicants filed a joint petition ("Application") seeking expedited commission approval of the Proposed Transaction, pursuant to HRS §§ 269-17 and 269-19.¹ According to Applicants, the Proposed Transaction is intended to result in Lightyear, First Communications and Xtension becoming

¹Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding.

an integrated telecommunications company with FCI as their ultimate parent. Applicants state that FCI will undertake an initial public offering on the Alternative Investment Market of the London Stock Exchange ("AIM") in March 2007 after which approximately 72% of its shares will be held by new investors while the remaining shares will be held by existing owners, founders and management of Lightyear, First Communications, and Xtension. Thereafter, FCI will acquire 100% of the shares of Lightyear, First Communications and Xtension. According to Applicants, the Proposed Transaction will not result in any assignment or transfer of certificates, assets or customers of Lightyear and Lightyear will continue to provide service to its existing customers in Hawaii under the same rates, terms and conditions.

Applicants request approval of the Proposed Transaction no later than February 15, 2007.

C.

Consumer Advocate's Statement of Position

On December 20, 2006, the Consumer Advocate filed its statement of position in which it states that it does not object to commission approval of the Proposed Transaction. In the alternative, the Consumer Advocate recommends that the commission, on its in motion, waive the approval requirements of

HRS §§ 269-7(a), 269-17 and 269-19, pursuant to HRS § 269-16.9 and HAR § 6-80-135.²

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 Lightyear is a non-dominant carrier in the State. We also find that the Proposed Transaction 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 requirements of HRS §§ 269-7(a), 269-17 and 269-19 should be waived, to the extent applicable, with regard to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135. Similarly, based on these findings and conclusions

²The Consumer Advocate also recommended that the commission condition its approval or waiver on Lightyear's filing with the commission and the Consumer Advocate its financial reports that should have been attached to its Public Utilities Commission Annual Report of Resellers and Various Telecommunications Services for the year ending December 31, 2005. It is the commission's understanding that Lightyear provided the commission with its financial statements on April 21, 2006, but may not have provided copies to the Consumer Advocate. At the request of commission staff, Lightyear has since provided the financial statements to the Consumer Advocate.

stated above, we will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that the Application fails 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 November 24, 2006.

2. The filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent applicable, are also waived.

DONE at Honolulu, Hawaii JAN 16 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou
Stacey Kawasaki Djou
Commission Counsel
2006-0462.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23199 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

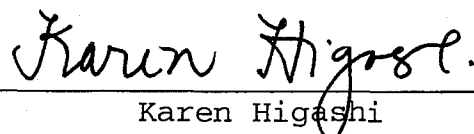
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DATED: JAN 16 2007