

In the Matter of the Application of)
)
LEVEL 3 COMMUNICATIONS, LLC)
)
For Approval to Participate in)
Certain Financing Arrangements)
_____)

Commission, State of Hawaii.
Karen H. Gisel.

In the Matter of the Application of)
LEVEL 3 COMMUNICATIONS, LLC)
For Approval to Participate in)
Certain Financing Arrangements)

Decision and Order No. 23296

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 request by LEVEL 3 COMMUNICATIONS, LLC ("Applicant") to participate in certain financing arrangements.

Applicant, a Delaware limited liability company, is presently authorized to provide facilities-based and resold telecommunications services in the State of Hawaii.¹ Applicant is a wholly owned subsidiary of Level 3 Financing, Inc. ("Level 3

¹Applicant received its Certificate of Authority by Decision and Order No. 17053, filed on June 29, 1999, in Docket No. 99-0049.

Financing"), which in turn is a wholly owned subsidiary of Level 3 Communications, Inc.

B.

Application

On October 25, 2006, Applicant filed an application seeking commission approval pursuant to HRS § 269-17 "and any other regulations deemed applicable,"² to participate in certain financing arrangements, as described in the application ("Application"). The financing arrangements involve a guarantee by Applicant of up to \$1.5 billion in notes³ issued by Level 3 Financing to qualified institutional buyers. Level 3 Financing, i.e., the issuer, will then lend the net proceeds from the offering to Applicant in return for an intercompany demand note issued by Applicant.

On December 18, 2006, Applicant supplemented its application further describing the proposed financing arrangements ("Supplement"). According to Applicant, the October 25, 2006 application described the first series of notes, which amounts to \$600 million (the "First Series Offering"). The December 18, 2006 Supplement describes a second series offering of approximately an additional \$650 million in financing that will be issued by Level 3 Financing to qualified buyers under the same terms and conditions as the notes described in the

²See Application at 1.

³The notes consist of 9.25% fixed rate interest notes due in 2014.

October 25, 2006 Application ("Second Series Offering").⁴ In its Supplement, Applicant informs the commission of the Second Series Offering and requests approval of the guarantee associated with the Second Series Offering, to the extent required. Thus, Applicant seeks in its Application and Supplement commission approval of the proposed financing transactions, the related guarantees and any encumbrance of assets necessary to secure the financing transactions ("Proposed Financial Transaction").

Applicant represents that the Proposed Financial Transaction: (1) "will not result in a change in [Applicant's] management or in their day-to-day operations in Hawaii"; (2) will not "adversely affect Applicant's current operations in Hawaii"; (3) "will be transparent to consumers"; and (4) that "consumers will benefit from the continued receipt of quality telecommunications services that are priced competitively."⁵ Applicant also asserts that the Proposed Financial Transaction will serve the public interest in promoting competition among telecommunications carriers by providing Applicant with the opportunity to strengthen its competitive position through access to greater financial resources. As a result, the Proposed Financial Transaction is expected to "strengthen [Applicant's] ability to bring competitive telecommunications services to consumers in the State of Hawaii."⁶

⁴See Supplement at 1-2.

⁵See Application at 4-5.

⁶Id.

C.

Consumer Advocate's Statement of Position

On November 30, 2006, the Consumer Advocate filed its statement of position ("Statement of Position") informing the commission that it does not object to the commission's approval of the Proposed Financial Transaction. If the commission approves the Proposed Financial Transaction, the Consumer Advocate recommends that the commission waive the requirements of HRS § 269-17 regarding the use of proceeds from the Proposed Financial Transaction. In the alternative, the commission may waive, on its own motion, the approval requirements set forth in HRS §§ 269-17 and 269-19, if applicable,⁷ in their entirety.

II.

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." Under this section, the commission will approve the Proposed Financial Transaction if it is reasonable and consistent with the public interest.⁸

⁷The Consumer Advocate states that, although not specified in the Application, authorization under HRS § 269-19 may be required if the financing arrangement involves the encumbrance of any of Applicant's property used to provide the facilities-based telecommunications for which Applicant is authorized to provide in Hawaii. Statement of Position at 3.

⁸See Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

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 twelve (12) months. This section permits the proceeds of such debt to be used only for the acquisition of property or for the construction, completion, extension, or improvement of or addition to the utility's facilities or service, or for the discharge or refunding of its obligations or reimbursement of funds expended for the foregoing described purposes. Furthermore, pursuant to HRS § 269-17, "[a]ll stock and every stock certificate, and every bond, note, or other evidence of indebtedness of a public utility corporation not payable within twelve months, issued without an order of the commission authorizing the same, then in effect, shall be void."

HRS § 269-19 requires a public utility corporation to obtain the commission's consent prior to, among other things, mortgaging, encumbering, or otherwise disposing of its property. Similar to HRS § 269-17, HRS § 269-19 also states: "Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void."

Having reviewed the record,⁹ the commission finds and concludes that the Proposed Financial Transaction falls under the

⁹The commission takes official notice of all commission records relating to Applicant, pursuant to HAR § 6-61-48.

purview of HRS §§ 269-7(a) and 269-17.¹⁰ Notwithstanding these regulatory requirements, HRS § 269-16.9 also permits 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 (except provisions of HRS § 269-34 or provisions of HAR chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest.

The commission finds that the telecommunications services currently provided by Applicant are fully competitive, and that Applicant is a non-dominant carrier in Hawaii. The commission also finds that the Proposed Financial 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, to the extent applicable, should be waived with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.¹¹ Similarly, based

¹⁰The commission agrees with the Consumer Advocate that the record is not clear as to whether HRS § 269-19 is applicable. However, the commission does not find it necessary to make such a determination given its ruling below.

¹¹See 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. The commission's determination, in the instant case, of the applicability of HRS §§ 269-7(a), 269-17 and 269-19 is based on

on the findings and conclusions stated above, the commission should also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that Applicant 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 Financial Transaction described in the Application filed on October 25, 2006, as supplemented on December 18, 2006. The Consumer Advocate's recommendation to provide copies of the executed pledge agreements requirements is also waived.

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.

our review of the instant Application only. 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 Applicant, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

DONE at Honolulu, Hawaii MAR 13 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:

Jodi L. K. Yi
Jodi L. K. Yi
Commission Counsel

2006-0429.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23296 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
335 Merchant Street, Room 326
Honolulu, HI 96813

JUDY TANAKA
Paul Johnson Park & Niles
Suite 1300, ASB Tower
1001 Bishop Street
Post Office box 4438
Honolulu, HI 96812

CATHERINE WANG
DANIELLE C. BURT
JEFFREY R. STENKOWSKI
BINGHAM MCCUTCHEN LLP
3000 K Street, NW, Suite 300
Washington, DC 20007

WILLIAM P. HUNT, III
VICE PRESIDENT OF PUBLIC POLICY
LEVEL 3 COMMUNICATIONS, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021



Karen Higashi

DATED: MAR 13 2007