

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
COMTEL TELCOM ASSETS LP)
)
For the Indirect Change in Control)
Of Comtel Telcom Assets LP)
_____)

DOCKET NO. 2007-0152

DECISION AND ORDER NO. 23683

Filed Sept. 27, 2007
At 11 o'clock A .M.

Karen Higashi
Chief Clerk of the Commission

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

2007 SEP 28 A 11: 11

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
COMTEL TELCOM ASSETS LP) Docket No. 2007-0152
For the Indirect Change in Control) Decision and Order No. 23683
Of Comtel Telcom Assets LP)

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 COMTEL TELCOM ASSETS LP's ("Applicant") request to approve the indirect transfer of control of Applicant that will result from a minority member acquiring a majority interest in an upstream limited liability company several levels above Applicant ("Proposed Transaction").

I.

Background

A.

Application

On June 6, 2007, Applicant¹ filed an application for commission approval of the Proposed Transaction, pursuant to HRS

¹By Decision and Order No. 22465, filed on May 16, 2006, in Docket No. 05-0298, Applicant was granted a certificate of authority to operate as a reseller and facilities-based provider of intrastate telecommunications services in the State of Hawaii.

§§ 269-17 and 269-19 ("Application").² According to Applicant, the Proposed Transaction will not result in the assignments of authorizations, assets or customers; Applicant will continue to provide services to its existing customers under the same rates, terms and conditions of service; and the Proposed Transaction will be transparent to consumers.

B.

Consumer Advocate's Statement of Position

On September 5, 2007, as amended on September 6, 2007, the Consumer Advocate filed its statement of position in which it states that it does not object to either waiver of the commission's approval and investigatory authority to review the Proposed Transaction, or commission approval of the Proposed Transaction.³

II.

Discussion

HRS § 269-16.9 allows the commission to waive regulatory requirements applicable to telecommunications

²Applicant 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.

³The Consumer Advocate also recommends that Applicant be required to file its 2006 Annual Financial Report ("2006 AFR"), which was due on March 31, 2007, and pay the applicable regulatory fees to the commission. It is the commission's understanding that Applicant filed its 2006 AFR and paid its regulatory fees, but may not have provided copies of the 2006 AFR to the Consumer Advocate. As such, on September 13, 2007, commission staff directed Applicant to provide the 2006 AFR to the Consumer Advocate.

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 Applicant 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 269-19⁴ should be waived, to the extent applicable, with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.⁵ Similarly, based on these findings and conclusions 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.

⁴The Consumer Advocate argued in its Statement of Position that HRS §§ 269-17, 269-19 were not applicable to the Proposed Transaction. As the commission has found that a waiver is appropriate, it need not determine the applicability of HRS §§ 269-17, 269-19.

⁵The 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 or 269-19 should be waived. Thus, our waiver in this instance 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.

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 June 6, 2007.


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

DONE at Honolulu, Hawaii SEP 27 2007.

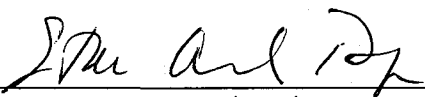
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Stacey Kawasaki Djou
Commission Counsel

2007-0152.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23683 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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Karen Higashi

DATED: **SEP 27 2007**