

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
FIRST COMMUNICATIONS LLC, and )  
GORES FC HOLDINGS, LLC )  
For Approval of Transfer of Control )  
\_\_\_\_\_)

DOCKET NO. 2007-0194

DECISION AND ORDER NO. 23684

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

2007 SEP 28 A 11:11

RECEIVED

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

Karen Higashi  
Chief Clerk of the Commission

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 Application of)  
FIRST COMMUNICATIONS LLC, and )  
GORES FC HOLDINGS, LLC )  
For Approval of Transfer of Control)  

---

Docket No. 2007-0194  
Decision and Order No. 23684

DECISION AND ORDER

By this Decision and Order, the commission waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a) and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable, with respect to FIRST COMMUNICATIONS, LLC ("FCL")<sup>1</sup> and GORES FC HOLDINGS, LLC's ("Gores FC") (collectively, "Applicants") request to approve the indirect transfer of control of FCL that will result from Gores FC obtaining de facto control of FCL's parent company, First Communications, Inc. ("FCI"),<sup>2</sup> by obtaining a right to appoint a majority of FCI's board of directors ("Proposed Transaction").

---

<sup>1</sup>By Decision and Order No. 23499, filed on June 20, 2007, in Docket No. 2006-0471, FCL was granted a certificate of authority to provide resold local exchange and interexchange telecommunications services in the State of Hawaii.

<sup>2</sup>FCI is the parent company of FCL and Lightyear Network Solutions ("Lightyear"). Lightyear is authorized by the commission to provide resold and facilities-based telecommunications services in the State, pursuant to Decision and Order No. 20820, filed on February 26, 2004, in Docket No. 03-0413.

I.

Background

A.

Application

On July 17, 2007, Applicants filed an application for commission approval of the Proposed Transaction, pursuant to HRS § 269-19 ("Application").<sup>3</sup> According to Applicants, they seek approval to consummate a transaction whereby Gores FC will obtain the right to appoint a majority of FCI's board of directors. They also inform the commission that Gores FC will obtain an additional 3.2 percent interest in FCI by converting non-voting shares of common stock to voting shares, which will increase its voting interest in FCI to 35.6 percent.

Applicants state that Gores FC is financially and managerially qualified to take de facto control of FCI, and that the Proposed Transaction will improve FCI's business operations. Because the transaction is at the holding company level, Applicants assert that the transaction will be entirely transparent to FCL's customers and that it will not result in any change to FCL's day-to-day operations or to its rates, terms, or conditions of service.

---

<sup>3</sup>Applicants 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.

B.

Consumer Advocate's Statement of Position

On September 6, 2007, the Consumer Advocate filed its statement of position in which it states that it does not object to 1) waiver of the commission's investigatory authority to review the Proposed Transaction, 2) waiver of the commission's approval requirements, or 3) commission approval of the Proposed Transaction.

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 FCL (and Lightyear) are non-dominant carriers 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) and 269-19<sup>4</sup> should be waived, to the extent

---

<sup>4</sup>The Consumer Advocate argued in its Statement of Position that HRS § 269-19 was not applicable to the Proposed Transaction.

applicable, with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.<sup>5</sup> 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.

III.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-7(a) and 269-19, to the extent applicable, are waived with respect to the Proposed Transaction, described in the Application filed on July 17, 2007.

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

---


As the commission has found that a waiver is appropriate, it need not determine the applicability of HRS § 269-19.

<sup>5</sup>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) 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.

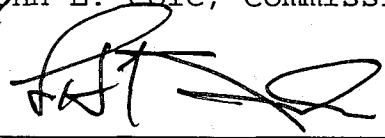
DONE at Honolulu, Hawaii

SEP 27 2007

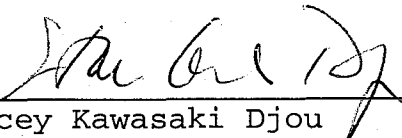
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Stacey Kawasaki Djou  
Commission Counsel

2007-0194.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23684 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

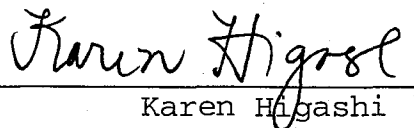
CATHERINE AWAKUNI  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

JEAN L. KIDDOO  
DANIELLE C. BURT  
BINGHAM McCUTCHEN LLP  
2020 K Street, N.W.  
Washington, DC 20006

Counsel for FIRS COMMUNICATIONS LLC

MARY CEGELSKI  
FIRST COMMUNICATIONS, LLC  
15278 Neo Parkway  
Garfield Heights, OH 44128

BRENT BRADLEY  
VICE PRESIDENT AND ASSISTANT GENERAL COUNSEL  
GORES TECHNOLOGY GROUP  
10877 Wilshire Boulevard, Suite 1805  
Los Angeles, CA 90024

  
\_\_\_\_\_  
Karen Higashi

DATED: SEP 27 2007